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Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

THE SOURCE HOTEL, LLC, a
California limited liability company,

Debtor and Debtor in Possession.

Case No.: 8:21-bk-10525-ES

Chapter 11

**DECLARATION OF ROBERT “CHARLIE”
CERVANTES IN SUPPORT OF:**

- (A) **OPPOSITION TO MOTION OF
SHADY BIRD LENDING, LLC FOR
ORDER EXCUSING STATE COURT
RECEIVER FROM TURNOVER OF
ASSETS PURSUANT TO 11 U.S.C. §
543; AND**
- (B) **OPPOSITION TO MOTION OF
SHADY BIRD LENDING, LLC FOR
ORDER DESIGNATING CHAPTER 11
CASE AS SINGLE ASSET REAL
ESTATE CASE PURSUANT TO 11
U.S.C. §§ 101(51B) AND 362(d)(3)**

Hearing:

Date: April 15, 2021
Time: 10:30 a.m.
Place: ZoomGov

DECLARATION OF ROBERT “CHARLIE” CERVANTES

I, Robert “Charlie” Cervantes, hereby declare as follows:

1. Since August 15, 2019, I have been employed by M+D Properties (“M+D”) and oversee maintenance and security of The Source complex located on Beach Boulevard in Buena Park, including the office, entertainment, dining, and retail areas, and the area containing the seven-story hotel that will, upon completion, be called The Source Hotel (the “Hotel”). The facts stated herein are of my own personal knowledge or were made known to me by a review of the books and records of M+D and The Source at Beach, LLC, which records are kept in the ordinary course of business and are created and maintained at or near the time of the events depicted therein by those with the responsibility to create or maintain them. If called upon as a witness, I could and would competently testify thereto.

2. I make this declaration in support of the opposition of The Source Hotel, LLC (the “Debtor”) to the motion filed by Shady Bird Lending, LLC (“Shady Bird”) for the entry of an order excusing Bellann R. Raile (the “Receiver”), who was appointed as receiver over the Debtor’s assets on or about February 17, 2021, from the requirement to turn over possession of the Hotel to the Debtor (the “Motion”).

3. I was directed by M+D and the Debtor to provide access to the Hotel rooftop to a maintenance contact for Shady Bird on January 27, 2021. I was advised that there would be one individual who would be inspecting the rooftop equipment. Instead, a team of five individuals, including Michael Schlesinger of Cambra Realty (“Cambra”) and four individuals from Swinerton Builders appeared at the designated meeting time. I advised the group that I had been instructed to show one individual to the Hotel rooftop, and that I would need further directions from M+D or the Debtor to allow the entire group up. I am advised and believe that Mr. Schlesinger contacted Ed Choi, who then contacted Leslie Chae, a member of the Debtor’s team. Ultimately, as a compromise, the Debtor and M+D agreed to permit access to the Hotel to two individuals from Swinerton Builders. However, once I took the two individuals to the Hotel rooftop to inspect the rooftop equipment, the two individuals informed me that Swinerton

Builders had been hired to inspect the Hotel project and that they would need to view the full Hotel building. I responded that I had not been authorized to provide access to the entire Hotel building that day and requested that they schedule a new date/time with the Debtor for such access.

4. Since approximately August, 2019, I have been in charge of overseeing the day-to-day maintenance of the Hotel.

5. On March 25, 2021, I conducted a thorough walk-through of the Hotel to personally assess the maintenance issues raised by Shady Bird in the Motion and to take photos of the Hotel, which are included below.

No.	Shady Bird's Allegation	Response/Observations
1	There are substantial roof issues which currently permit the intrusion of water into the structure.	Air vent openings on the Hotel roof were left covered and maintained regularly by M+D until the Receiver took possession. Based on my March 25 walk-through, it appears that the Receiver has not regularly maintained the roof area, as the protective plastic coverings that M+D installed on the vent openings immediately before the Receiver's appointment were still present, but there had been no efforts to fix any tears in the covers or to refasten covers that were blown off. See photos below.

IMG 4922 – ripped cover circled



IMG 4926 – loose fasteners



IMG 4954 – blown off cover has been ignored



No.	Shady Bird's Allegation	Debtor's Response
2	The construction assemblies on the roof are incomplete and create an opportunity for water infiltration.	It is unclear to me what "construction assemblies" Shady Bird is referring to. Based on my March 25 walk-through, there appears to be no "construction assemblies" other than the air vent openings issue already discussed in Item No. 1 above.

1	3	The fire sprinkler system is not currently capable of providing life-safety protection for the Project.	The water supply lines and the automatic sprinklers have all been installed the Hotel, as confirmed for each of the floors I visited on my March 25 walk-through (floors 1, 2, 4 and 7). However, the protective covers for the sprinklers are still in place because the ceiling drywall and finish have yet to be installed. See photos below.
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5			

6 **IMG 4978 – Seventh floor hallway**



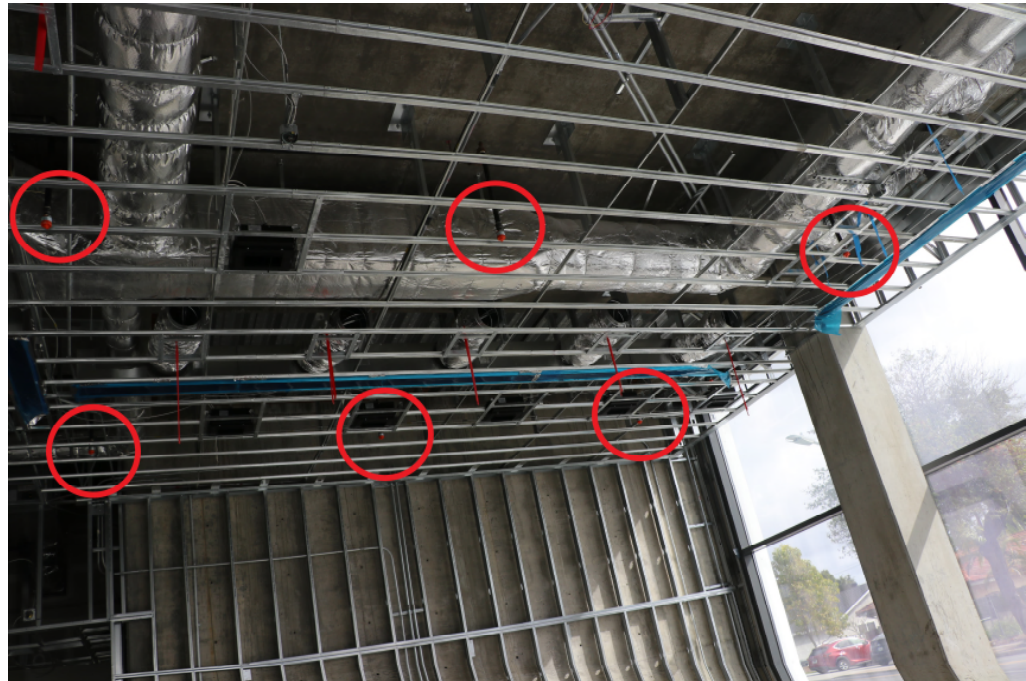
17 **IMG 5035 – Fourth floor hall is completed**



IMG_5090 – Second Floor Hallway



IMG_5105 – First Floor



No.	Shady Bird's Allegation	Debtor's Response
4	Due to neglect and exposure to UV rays, the pool deck will need substantial repair.	My construction crew applied sealant over the pool deck and regularly maintained the area, which was covered with a plastic tarp, until the Receiver took possession. Based on the March 25 walk-through, it appears that the Receiver has not regularly checked or maintained the pool deck as

the tarp installed by M+D was torn and had blown off by wind, and there had been no efforts to put the tarp back in place or make other protective arrangements. See photos below.

IMG 4992 – Black tarp blown off, exposing brown surface



IMG 4990 – Black tarp blown off, exposing brown surface



1 **IMG 5041**



12 **IMG 5049**



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No.	Shady Bird's Allegation	Debtor's Response
5	The pool has an accumulation of water and trash making it a breeding ground for mosquitos, which may carry the West Nile Virus.	As part of my maintenance duties, my crew and I had been pumping water out of the pool after each rainfall until the Receiver took possession. Accordingly, any water and trash accumulation in the pool occurred after the Receiver took possession. Based on my March 25 walk-through,

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it appears that the Receiver has not pumped water out of the pool on any regular basis. See photo below.

IMG 5047



No.	Shady Bird's Allegation	Debtor's Response
6	Completed business finishes are not being protected and are exposed to waste or damage.	It is unclear what "completed business finishes" Shady Bird is referring to. There are some HVAC materials that have yet to be installed which are currently stored on the roof, but none of those materials are being wasted or damaged. Based on my March 25 walk-through, there appears to be no other "completed business finishes."
7	A potentially hazardous situation may exist if the building sewer system is not connected to the public system.	The building sewer system is connected to the public system, but unused drains can emanate sewer odors since the water that would otherwise drain down the pipes (like the P-traps, those U-shaped pipes under drains) to seal against odors from the sewer line would evaporate. As part of my maintenance duties, my crew and I regularly flushed/draind/hosed water down these drains to maintain the water seal. Based on my March 25 walk-through, it appears that the Receiver has not performed proper maintenance by flushing toilets or filling the P-traps, which has resulted in odors from the sewer line to come out. The Receiver's

1		staff acknowledged during my March 25 walk-
2		through that the odor was likely from the toilet,
3		shower and sink drains losing their water seal, and
4		indicated they were unaware of any other
5		chemical/hazardous reasons for the odor. See
6		photos below.

IMG 5011 – toilet on Seventh Floor



IMG 5097 – sewer line w/ p-trap at First Floor of Retail



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2 **IMG 5098 – close up view of sewer opening, with a water sprayer that is not**
3 **spraying any water.**



14 **IMG 5098A – pipe is dry inside, exposing odor from sewer.**



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No.	Shady Bird's Allegation	Debtor's Response
8	HVAC package units have been left unsecured and accessible to thieves and vandals.	HVAC units have been stored in the covered parking structure and have been monitored continuously by the security for the entire "The

Source” complex. Even though the HVAC units are monitored regularly by security, the Debtor and M+D secured the HVAC units with fencing, which remain in place. See photo below.

IMG 5113



No.	Shady Bird's Allegation	Debtor's Response
9	There are hazardous and caustic chemical unsecured at the Project.	It is unclear what “hazardous and caustic chemical” Shady Bird is referring as there is no detail provided. Based on my March 25 walk-through, it appears the reference is to a one-gallon yellow chemical that was left <i>sealed</i> on the bathroom counter of Room 725 (see photo below). Nothing else that resembled a chemical was witnessed during my March 25 walk-through.

IMG 5017



No.	Shady Bird's Allegation	Debtor's Response
10	The Debtor's failure to take reasonable measures to maintain, protect, and secure the project under the operative deed of trust.	This appears to be a "catch all" reference to all of the Items discussed above, but my March 25 walk-through indicated nothing out of the ordinary. The Debtor and M+D took reasonable measures to maintain, protect and secure the Hotel before the Receiver took possession, but it appears that the Receiver has not continued such measures.
11	The Debtor's failure to prevent the project from becoming vandalized, damaged, destroyed, and deteriorated.	While the Debtor was in possession, there was an incident where a vandal broke a layer of glass on a dual-pane storefront glass window facing Orangethorpe Avenue, which my crew cleaned out by removing the broken glass. After the Receiver took possession, there was another incident where a vandal broke through the same window, which resulted in the Receiver installing plywood to cover the opening.

1 **IMG 5101**



10 **IMG 5102**



19 **IMG 5103 – facing Orangethorpe.**



No.	Shady Bird's Allegation	Debtor's Response
12	The Debtor's failure to prevent material physical waste of the project.	This appears to be another "catch all" reference to all of the Items discussed above, but my March 25 walk-through indicated nothing out of the ordinary. The Debtor and M+D took reasonable measures to maintain, protect and secure the Hotel before the Receiver took possession, but it appears that the Receiver has not continued such measures.
13	The Debtor's failure to allow Shady Bird to enter upon and inspect the project.	This appears to be a reference to the January 27, 2021 meeting at the Hotel discussed above, where Mr. Schlesinger of Cambra brought an entire team of people to inspect the Hotel after requesting access for one maintenance person to view the Hotel roof.
16	The Debtor's failure to maintain various systems and improvements on the project such as the elevator, electrical, HVAC, and plumbing.	My March 25 walk-through indicated nothing out of the ordinary. The Debtor and M+D took reasonable measures to maintain, protect and secure the Hotel before the Receiver took possession, but it appears that the Receiver has not continued such measures.
17	The Debtor's failure to provide any security for the project and improvements.	To the best of my knowledge, there has always been, and continues to be, full time 24/7 security service for the entire "The Source" complex, including the Hotel, courtesy of the real property owner, The Source at Beach, LLC. To the best of my knowledge, there has never been any interruption of the security provided to the Hotel.
18	The Debtor's failure to timely test the fire-life safety systems which could completely destroy the project.	I am not aware of any issues regarding the efficacy of the fire-life safety systems, and I am not aware of any "deadline" to test such systems.

No.	Shady Bird's Allegation	Debtor's Response
22	Improper patch at roof door leak. <i>(issue raised in the property inspection report attached to the Motion)</i>	This issue was not visible to me during my March 25 walk-through. However, neither the Receiver nor I are aware of any roof leaks.
23	Missing flashing/improperly installed flashing <i>(issue raised in the property inspection report attached to the Motion)</i>	This issue was not specifically inspected during my March 25 walk-through and appears to be more of a construction issue (which is typically addressed during the completion of construction) and not a maintenance issue. In the meantime, however, my crew can get the area covered.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 1st day of April, 2021, at Los Angeles, California.



ROBERT "CHARLIE" CERVANTES

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled **DECLARATION OF ROBERT "CHARLIE" CERVANTES IN SUPPORT OF: (A) OPPOSITION TO MOTION OF SHADY BIRD LENDING, LLC FOR ORDER EXCUSING STATE COURT RECEIVER FROM TURNOVER OF ASSETS PURSUANT TO 11 U.S.C. § 543; AND (B) OPPOSITION TO MOTION OF SHADY BIRD LENDING, LLC FOR ORDER DESIGNATING CHAPTER 11 CASE AS SINGLE ASSET REAL ESTATE CASE PURSUANT TO 11 U.S.C. §§ 101(51B) AND 362(d)(3)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **April 1, 2021**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Ron Bender rb@lnbyb.com
- Michael G Fletcher mfletcher@frandzel.com, sking@frandzel.com
- Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- Daniel A Lev dlev@sulmeyerlaw.com, ccaldwell@sulmeyerlaw.com; dlev@ecf.inforuptcy.com
- Grant A Nigolian grant@gnpclaw.com, process@gnpclaw.com; grant.nigolian@gmail.com
- Juliet Y Oh jyo@lnbrb.com, jyo@lnbrb.com
- Ho-El Park hpark@hparklaw.com
- Ronald N Richards ron@ronaldrichards.com, morani@ronaldrichards.com
- United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL: On **April 1, 2021**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

None.

☐ Service List continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **April 1, 2021**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Served via Overnight Mail

The Honorable Erithe A. Smith
United States Bankruptcy Court
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

April 1, 2021	Stephanie Reichert	/s/ Stephanie Reichert
Date	Type Name	Signature